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OFFICE OF PETITIONS

In re Application of :
Bradley F. Chmelka et al. :
Application No. 10/736,462 : DECISION ON PETITION
Filed: April 5, 2004 :
Attorney Docket No.: :
600950-1010 :
Title: BLOCK POLYMER PROCESSING :
FOR MESOSTRUCTURED INORGANIC :
OXIDE MATERIALS :

This is a decision on the petition filed October 25, 2005, requesting that the above-identified application be accorded a filing date of December 15, 2003, with Figures 2a and 2b included as part of the original disclosure.

The application was deposited on December 15, 2003. However, on March 24, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice to File Missing Parts of Nonprovisional Application" (notice), stating that the application had been accorded a filing date of December 15, 2003, and advising applicants that the application appeared to have been deposited without Figure 2 and an oath or declaration. The notice set a two-month period for response.

In response, on April 5, 2004, applicants filed a declaration, the surcharge associated with the late submission of the same, Figures 2a and 2b, and a change of address. OIPE accepted the drawings, and assigned the application a filing date of April 5, 2004.

It is noted that the notice set forth two options for the applicant. The first set forth that if the applicant wished to

contend that the missing figure was present at the time of filing, a petition would need to be filed. The second indicated that a petition would be required should the applicant decide to supply the omitted item at a later date and accept this later date as his filing date.

With the present petition, it is clear that Petitioner seeks a third option - he wishes to introduce two figures which were not present on filing, yet retain the original filing date of December 15, 2003.

This cannot be done.

It is clear that Figure 2 was not present on filing. Petitioner has two options - Figures 2a and 2b, which were not present on filing, can be entered into the record if he accepts the date of their receipt, April 5, 2004, as the filing date. Alternatively, he may receive December 15, 2003 as the filing date and neither of these two figures will be entered into the record.

With the present petition, Petitioner has stated, over his registration number, that drawings are "not necessary to understand the subject matter sought to be patented¹." Petitioner should note that accepting a filing date of December 15, 2003 without the entry of these two drawings does not preclude him from filing an amendment to present these two figures at a later date via the filing of an amendment which requests their entry. Any such amendment will, of course, be reviewed by the examiner for new matter².

As it is not clear which option Petitioner would prefer, the present petition must be **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.53". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail³, hand-delivery⁴, or facsimile⁵.

1 Petition, pages 1-2.

2 See MPEP 608.02(h) and 608.04.

3 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanowski
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5 (571) 273-8300- please note this is a central facsimile number.